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OFFICE OF PETITIONS

In re Application of	:	
Kuyama et al.	:	DECISION ON PETITION
Application Number: 09/656777	:	TO WITHDRAW HOLDING OF
Filing Date: 09/07/2000	:	ABANDONMENT
Attorney Docket Number:	:	
09793822-0409	:	

This is a decision on the petition, filed on 3 July, 2007, to withdraw the holding of abandonment in the above-identified application.

The application was held abandoned for failure to respond in a timely manner to the non-final Office action mailed on 30 October, 2006. Notice of Abandonment was mailed on 4 June, 2007.

Petitioners assert that a proper response was in fact timely filed in the form of an amendment to the non-final Office action. In support of the petition, petitioners submitted a copy of a date-stamped post card receipt acknowledging receipt of the amendment and petition for extension of time in the United States Patent and Trademark Office (Office) on 4 May, 2007. Additionally, petitioners have submitted a copy of the response with the present petition.

The original fee payment for a three (3) month extension of time filed on 4 May, 2007, has been located in the Office.

Petitioners' response to the non-final Office action is not of record in the file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the reply to the restriction requirement was received in the Office but was not matched with the application file.

The date-stamped on the post card of 4 May, 2007, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The transmittal letter entitled "AMENDMENT IN RESPONSE TO OFFICE ACTION OF 10/30/2006" filed with the present petition bears a proper certificate of mailing, dated 30 April, 2007, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

It is noted that a three (3) month extension of time is required to make the response filed on 30 April, 2007, a timely response to the Office action mailed on 30 October, 2006.

The additional two (2) month time extension filed with the present petition is unnecessary and will be credited to counsel's deposit account.

The application file will be referred to the Technology Center's technical support staff for entry of the response. Thereafter, the application file will be referred to the examiner for action in due course.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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